



21 March 2018

PRESS SUMMARY

Dryden and others (Appellants) v Johnson Matthey Plc (Respondent) [2018] UKSC 18
On appeal from [2016] EWCA Civ 408

JUSTICES: Lady Hale (President), Lord Wilson, Lord Reed, Lady Black, Lord Lloyd-Jones

BACKGROUND TO THE APPEAL

The Appellants worked for the Respondent in factories making catalytic converters. In breach of its duty, under the health and safety regulations and at common law, the Respondent failed to ensure that the factories were properly cleaned and, as a result, the Appellants were exposed to platinum salts. This exposure led them to develop platinum salt sensitisation (immune system production of IgE antibodies). Platinum salt sensitisation is a condition producing or showing no symptoms. Further exposure to chlorinated platinum salts is likely to cause someone with platinum salt sensitisation to develop an allergic reaction with physical symptoms such as asthma, rhinitis or skin rashes. When the Appellants' sensitisation was detected, the Respondent no longer permitted them to work in areas where they might be exposed to platinum salts and develop allergic symptoms. Each Appellant claims they have suffered financially because of their sensitisation to platinum salts because they had to take up a different role with the Respondent at a reduced rate of pay or because they had their employment terminated.

The questions that arose in the courts below and on appeal to the Supreme Court of the United Kingdom were as follows:

- (1) Does platinum salt sensitisation qualify as an actionable personal injury?
- (2) Alternatively, can the Appellants recover damages for economic loss under an implied contractual term and/or in negligence?

The Appellants lost at first instance and in the Court of Appeal. At first instance, Mr Justice Jay concluded that they had sustained no actionable personal injury and that their claim was for pure economic loss, for which they were not entitled to recover in tort. He also rejected their alternative claim in contract. The Court of Appeal upheld Mr Justice Jay's ruling.

JUDGMENT

The Supreme Court unanimously allows the appeal. Lady Black gives the sole judgment with which the other justices agree.

REASONS FOR THE JUDGMENT

Negligence and breach of statutory duty are not actionable in and of themselves. It is necessary for claimants to establish that there has been damage in the form of actionable personal injury. No decided case provides a definition of actionable personal injury, but there is some guidance as to its attributes. [11-12]

Personal injury has been seen as: a physical change which makes the claimant appreciably worse off in respect of his health or capability; as including an injury sustained to a person's physical capacity of enjoying life; and as an impairment. It can also be hidden and symptomless. [27]

What matters in this case is the behaviour of the IgE antibody, which is produced by an individual who has developed platinum salt sensitisation. If such an individual is exposed again to platinum salts, the IgE antibody is likely to react in a way which produces allergic symptoms. When an individual becomes sensitised, this change to their body means that they lose their capacity to work around platinum salts. [37]

Respondent's counsel acknowledged that if the Appellants had developed a sensitivity to something encountered in everyday life, such as sunlight, they would have sustained actionable damage because they would not be able to carry on with their ordinary life. The Appellants' ordinary lives involved doing jobs of a type which, by virtue of their sensitisation, they can no longer do. This cannot be distinguished from the person who developed a sensitivity to sunlight. [39]

The physiological changes to the Appellants' bodies are undoubtedly harmful. *Cartledge v Jopling* establishes that the absence of symptoms does not prevent a condition amounting to actionable personal injury. What has happened to the claimants is that their bodily capacity for work has been impaired and they are therefore significantly worse off. [40]

Once the sensitisation is identified as an actionable injury in its own right, the Respondent's argument that the Appellants are claiming only for their lost earnings and therefore for pure economic loss also falls away. [44]

This case is distinguishable from *Rothwell v Chemical and Insulating Co Ltd*. In that case, the pleural plaques the claimants developed were nothing more than a symptomless marker of exposure to asbestos dust and would not lead to or contribute to any condition which would produce symptoms, even with further exposure to asbestos dust. In this case, the Appellants' sensitisation carries the risk of an allergic reaction in the event of further exposure to platinum salts and they must change their lives to avoid such exposure. [47]

In these circumstances, it is unnecessary to consider the Appellants' alternative argument that they should be able to recover for pure financial loss. [49]

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>